



Ninety-Seventh Legislature - First Session - 2001
Introducer's Statement of Intent
LB 752

Chairperson: Senator Kermit A. Brashear
Committee: Judiciary
Date of Hearing: February 15, 2001

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The justification and arguments in support of this bill can be found in State ex rel. NSBA v Krepela, 259 Neb. 395 (2000)

LB 752 provides that a person need not be a lawyer to be eligible for the office of county judge or district judge. The current lawyer requirement is merely statutory. The Constitution does not require any judge (including the Chief Justice or Judge of the Supreme Court) to be a lawyer.

Being a lawyer in this state is synonymous with being a member of the Nebraska State Bar Association, a private organization. A nonmember cannot practice law.

The NSBA, through the Counsel for Discipline, has been authorized "to assist the Supreme Court in regulating the practice of law within the state;" page 404. Such "regulation" consists of initiating disciplinary action against members of the Bar.

The Court, however, ruled categorically in Krepela that "the Counsel for Discipline may not initiate the discipline of a sitting judge," explaining: "When a member of the judiciary assumes the bench, he or she is prohibited from practicing law;" page 404. Therefore, "Since members of the judiciary do not practice law, the Counsel for Discipline has no role in disciplining sitting judges." Id.

The corollary of that proposition is that no reason exists to require any judge to be a lawyer; that is, a member of the NSBA.

A sitting judge can only be disciplined by the Supreme Court. If a nonlawyer-judge should be removed by the Supreme Court and wants to practice law, he or she would have to seek admittance to practice in the same manner as any other applicant; and the conduct resulting in removal could stand as a bar to admittance to practice.

If a lawyer-judge is removed, he or she is stripped of the protection afforded a sitting judge and becomes "merely" a lawyer, subject to the jurisdiction of the Counsel for Discipline

who then may initiate disciplinary action to determine whether conduct resulting in removal also disqualifies such former judge from retaining a license to practice law.

LB 752 acknowledges reality by producing a neat package with no loose or hanging strings. It removes an arbitrary and meaningless hurdle which is not found in the path of a member of the Supreme Court (see Art. V, sec. 7 of the Nebraska Constitution for qualifications to be Chief Justice or a Judge of the Supreme Court: at least 30 years old, a citizen of the USA and resident of Nebraska for 3 years).

Principal Introducer:

Senator Ernie Chambers